This Recommended Liability Determination was followed by a Recommended Order and Decision in the 3rd Quarter of 2004.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
RICHARD BOOTH,	)	CHARGE NO: **1999CF1185**
Complainant,	)	EEOC NO: **21B990405**
	)	ALS NO: **10886**
and	)	
	)	
BROOKS PRECISION, INC.,	)	
Respondent.	)	
	)	

RECOMMENDED LIABILITY DETERMINATION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Chicago, Illinois on February 27, 2002. On August 28, 2002 and October 11, 2002, Complainant and Respondent Brooks Precision, Inc. filed their Post-Hearing Briefs, respectively. On November 6, 2002, Respondent filed a Reply Brief, while Complainant filed a Reply Brief on November 14, 2002. Accordingly, this matter is ripe for decision.

Contentions of the Parties

Complainant states that he has made out a *prima facie* case of sexual harassment. Complainant asserts that he notified two supervisors of the sexual harassment allegedly perpetrated by his immediate supervisor, Roger Bier, but that nothing was ever done about the harassment. Complainant contends that he was forced to leave his job as a result of the alleged harassment in order to seek medical attention, for which he requested time off. Complainant argues that he was subsequently fired because he hired an attorney to pursue his claim of sexual harassment.

Respondent contends that Complainant has failed to establish a *prima facie* case of sexual harassment, and has failed to prove a retaliation claim. Respondent further contends that Complainant has not established a cause of action under the Illinois Human Rights Act for sexual harassment or a hostile environment. Respondent argues that the alleged harasser was not a supervisor, and that they addressed the issue promptly and sufficiently when they received notice of the allegations. Respondent further argues that they had a legitimate reason for terminating the Complainant.

Findings of Fact

Based upon the record in this matter, I make the following findings of fact:

1. Complainant is a male.

2. Complainant was hired by Respondent Brooks Precision, Inc., as a machine operator at $11.00 per hour prior to his termination on July 31, 1998.

3. Complainant's immedidate supervisor when he worked for Respondent in the Lathe Department was Roger Bier. Gretchen McVeigh supervised Complainant when he worked in the Milling Department. Greg Lee was the operations manager who supervised Complainant, Bier and McVeigh.

4. Susan Gorsky was Respondent's Administrative Manager who was responsible for personnel matters at the time of the alleged sexual harassment.

5. During the first week of June 1998, Roger Bier asked Complainant if he was gay and remarked that "homosexuals are absolutely useless other than being cock suckers." Br. Bier also asked Complainant if he wanted to "suck his dick," and told him that he looked to be "gay" or "bisexual."

6. In early June of 1998, Roger Bier made a hand to mouth gesture of performing penile oral sex and motioned to Complainant to participate. Mr. Bier continued to make these gestures to Complainant on other subsequent ocassions. Thereafter, during the months of June and July of 1998, Roger Bier engaged in action against Complainant, which included: telling Complainant that he needed to wear safety glasses because "pubic hair can scratch your eyes," scratching Complainant's chin and stating, "I'm scratching my balls," asking Complainant to grow a goatee for him so his "testicles would have a shock absorber," refusing to help Complainant read a blueprint because he refused to give him a "blow job," telling Complainant that he was performing oral sex on Greg Lee every time he saw him speaking to him, and calling him "gay," "homosexual," "fag" and other derogartory names.

7. In June and July of 1998, Complainant informed Greg Lee of the alleged incidents involving Roger Bier.

8. On July 31, 1998, Roger Bier plowed a pallet jack into Complainant's work area and remarked, "This wouldn't happen to you if you weren't such a cock sucker." Complainant indicated to several employee, including Ms. McVeigh, that they had witnessed the incident and were going to testify about it.

9. As a result of the July 31, 1998 incident, Complainant left Respondent's place of employment and sought medical treatment at Janet Wattles Center (a mental health center) and obtained an attorney. Complainant's attorney faxed a letter on July 31, 1998 to Respondent indicating that he was representing Complainant in a claim for sexual harassment and that as a result of the harassment, Complainant would be requiring some time off. The letter also requested that Respondent not contact Complainant by telephone

10. On August 3, 1998, a letter was sent to Respondent by Complainant's attorney indicating Complainant's status and requesting time off for him. Other letters dated August 5, 1998 and August 28, 1998 were also sent to Respondent indicating Complainant's status and requesting that he be given time off.

11. In late September of 1998, Complainant contacted Gretchen McVeigh and advised her that he would be returning to work and was requesting to work in her department. Ms. McVeigh informed Complainant that she believed that he had been terminated. Complainant did not receive a letter of termination from Respondent.

12. On Ocotber 1, 1998, Complainant met with Henry Brooks and told him that he would be released by his doctor to go back to work. Mr. Brooks informed Complainant that he could not come back to work because of the pending situation with his claim. Complainant asked for his job back, and Mr. Brooks told him that he could not speak to him, pursuant to the letter he received from Complainant's attorney. Complainant subsequently filed a Charge of discrimination with the Department on November 4, 1998.

13. Complainant earned $11.00 an hour for a regular 40 hour work week while employed with Respondent.

14. Complainant incurred $1,476.63 in medical bills related to his psychiatric treatment as a result of the sexual harassment.

15. Complainant is entitled to back pay.

16. Complainant suffered emotional distress due to Respondent's actions, and is entitled to damages.

17. Complainant is entitled to reasonable attorney fees and costs related to this matter.

Conclusions of Law

1. Complainant is an "employee" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/2-101(A)(1)(a) and 5/2-101(B)(1)(a), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Complainant has made out a *prima facie* case of sexual harassment and has shown that he was subjected to a hostile work environment.

4. Complainant has shown that he was discharged from his position with Respondent as a result of retaliation.

5. Complainant has shown that he suffered emotional damage as a result of Respondent's actions.

6. Complainant is entitled to damages as well as attorney fees and costs related to this matter.

7. Complainant is entitled to back pay for the period of July 31, 1998 to January of 2000, minus earnings he received.

Determination

Complainant has established a *prima facie* case of sexual harassment as prohibited by Section 6-101(A) of the Act. Complainant has also proven by the preponderance of the evidence that Respondent's actions created a hostile work environment. Complainant further proved that he was discharged in retaliation for making a claim of sexual harassment, and that he had suffered emotional distress as a result.

Discussion

Complainant contends that he has made out a *prima facie* case of sexual harassment as defined by the Illinois Human Rights Act. Complainant argues that the actions of Roger Bier constitutes sexual harassment. Complainant contends that Respondent is liable because Mr. Bier was a supervisor, and because they failed to do anything when they were informed of the harassment. Complainant asserts that as a result of Respondent's actions, he was forced to leave and take time off in order to seek medical attention. Complainant further contends that he was discharged because he retained an attorney to pursue his claim of sexual harassment.

Respondent contends that Complainant cannot establish a cause of action under the Act for sexual harassment or hostile environment. Respondent argues that Roger Bier was not a supervisor, therefore they had no knowledge of the incident. Respondent further argues that they were informed of the incidents only after Complainant had already left on August 3, 1998. Respondent states that they investigated the allegations once they were made aware of them. In addition, Respondent argues that the alleged incidents do not rise to the level of sexual harassment. Respondent also contends that Complainant was discharged because he had failed to notify them of his absence for three consecutive days.

Section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) provides that it is a civil rights violation for any employer or employee to engage in sexual harassment; provided that an employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. The Act further defines sexual harassment as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when…(3) such conduct has the purpose or effect of substantially interfering

with an individual's work performance or creating an intimidating, hostile or offensive working environment." The Commission has declared that there is no "bright line" test for determining what behavior will lead to liability under a sexual harassment theory and has charged the Administrative Law Judge with assessing not only what was done in the workplace, but how it was done in relationship to the total working environment. See, Robinson v. Jewel Food Stores, 29 Ill. HRC Rep. 198, 204 (1986). Ultimately, however, the threshold issue in any sexual harassment case is whether the instances of harassment alleged by Complainant rise to the level of hostility so as to be considered actionable conduct. See, Scott v. Sears, Roebuck & Co., 798 F.2d 210 (7th Cir. 1986).

Respondent contends that the alleged sexual harasser, Roger Bier, is not a supervisor or managerial employee for purposes of holding Respondent liable for his actions. The facts in this case cleary show that Roger Bier was a supervisor for Respondent. During the hearing, Respondent's president, Henry Brooks, was asked whether Mr. Bier was a "shop supervisor" and he replied, "Yes, he was a leadman in the Lathe Department.[1] As such, it is well established that under the Human Rights Act, an employer is automatically liable for sexual harassment carried out by a supervisor. HRA § 2-102(D); Board of Directors, Green Hills Country Club v. Illinois Human Rights Commission, 162 Ill.App.3d 216, 514 N.E.2d 1227, 113 Ill.Dec. 216 (5th Dist. 1987). Therefore, it follows that Respondent Brooks Precision, Inc. can be held liable for the harassing actions taken by Mr. Bier against the Complainant prior to receiving knowledge of such actions.

The question then turns to whether the incident alleged by Complainant is sufficient to give rise to the level of hostility to be considered actionable conduct. Respondent argues that the

[1] Transcript - page 116, line 7 - 10.

incident Complainant alleges does not rise to the level of pervasive harassment as defined by the courts. Complainant's basic argument to this regard is that under the ruling found in Oncale v. Sundower Offshore Services, Inc., 523 U.S. 75 (1998), Complainant has failed to demonstrate that the alleged conduct was directed at him because of his gender, and at best it was far more likely that Bier's actions were motivated by animositly towards homosexuals or juvenile provocation, which are not actionable.

In Oncale, the Supreme Court held that Title VII's protection against sexual harassment extends to men as well as women, and that "male-on-male" sexual harassment would therefore be prohibited by that statute. However, the Supreme Court made clear that its opinion should not turn Title VII into a "general civility code" for the American workplace for two reasons: (1) the conduct must be objectively severe, and (2) the harasser must have taken the actions against the victim "because of" the victim's sex in order for a Title VII violation to occur. The requirement of severe conduct insures:

> "that courts and juries do not mistake ordinary socializing in the workplace--such as male-on-male horseplay or intersexual flirtation--for discriminatory 'conditions of employment' . . In same-sex (as in all) harassment cases, the inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. . ." Oncale, 118 S.Ct. at 1002-1003.

The Supreme Court in Oncale articulated three methods by which a Complaianant can show same-sex harassment, which include; 1) offering credible evidence that the haraser was actually motivated by sexual desire toward the victim, 2) offering proof of gender-specific statements from which an inference can be drawn that the harasser is motivated by general

hostility to members of the same sex in the workplace and /or, 3) offering comparative evidence showing differences in how the harasser treated members of both sexes in the workplace.

The facts in the case show a propensity on the part of Bier to be very specific in his language towards the Complainant regarding his desire or intention. Bier asked Complainant if he was gay or bi-sexual and insisted that he was even though Complainant replied to him in the negative. Bier then continually asked Complainant if he would perform oral sex on him. The nature and consistency of Bier's actions appear to be more in line with an individual who is attempting to elicit a sexual favor from a worker he supervises, rather than mere horseplay or hostility towards gay men in general. In fact, when Complainant asked Mr. Bier for assistance on a blueprint, Mr. Bier refused to assisst the Complainant because he refused to give him a "blow job." This type of egregious behavior would palpably be considered sexual harassment if Complainant were a woman. The record also shows that after Complainant rebuked Bier's advances, Bier began to accuse Complainant of having oral sex with Greg Lee every time he saw them together. This type of behavior is more consistent with a jealous courter who believes that the object of his desire is now having a relationship with another, and not one of horseplay. There was no evidence presented that Bier treated employees of the opposite sex in the same manner, nor was Complainant's testimony effectively contested during the hearing because Bier did not testify. The record is void of any denial on the part of Bier that could be considered by the ALJ. I found that the testimony of Complainant to be both believable and corroborating. Complainant testified that on his last day he began to point and shout at individuals, including Ms. McVeigh, telling them that they had seen the incident and would be testifying. Ms. McVeigh testified that she did indeed hear Complainant make those remarks on July 31, 1998, but somehow did not hear or understand anything else said by Complainant. I did not find Ms.

McVeigh's testimony to be altogether truthful. For the reasons stated above, I find that Bier's actions rose to the level of sexual harassment for the purpose of the Act.

The salient issue in this matter now turns to whether Respondent failed to take any corrective action. The Respondent argues that they took sufficient corrective action by conducting an investigation as soon as they became aware of the allegations. The investigation consisted of speaking with the supervisors and asking them if they knew anything regarding Complainant's sexual harassment allegations. Respondent states that it found no evidence of sexual harassement. The problem with Respondent's response is that it runs counter to its explanation of Complainant's termination. It appears that Respondent does not realize the contradictory position it places itself in. On the one hand, Respondent states that Complainant was terminated on August 3, 1998 because of his failure to call in absences for three consecutive days. On the other hand, Respondent claims that they conducted the investigation into the matter on the same day they terminated Complainant. It appears that any investigation conducted at this point was strictly for the benefit of Respondent and not Complainant. Therefore, I do not find that Respondent's took sufficient corrective action that would relieve them of liability.

Since a *prima facie* case has been established, a rebuttable presumption arises that the Respondent unlawfully discriminated against the Complainant. It now falls upon Respondent to rebut the presumption by articulating, not proving, a legitimate, nondiscriminatory reason for its action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 67 L.Ed.2d 207, S.Ct. 1089 (1981). During the public hearing, Respondent articulated a legitimate, non-discriminatory reason for its actions. Under circumstances where the respondent has set forth its articulation, the question whether complainant has proved each element of the prima facie case is no longer as significant. Having articulated its reason for the adverse employment decision at

issue, as will be detailed below, the only real question remaining in the instant case is whether Complainant has shown by a preponderance of the evidence that Respondent's articulation is a pretext for discrimination. Clyde and Caterpillar, Inc., 52 Ill. HRC Rep. 8 (1989), aff'd sub nom Clyde v. Human Rights Comm'n, 206 Ill. App. 3d 283, 564 N.E.2d 265, 151 Ill. Dec. 288 (4th Dist. 1990); Ruffin and South Shore YMCA, 33 Ill. HRC Rep. 64 (1987). The trier of fact may then turn to the ultimate question of whether unlawful discrimination has been proven. Torian and Dreisilker Electric Motors, Inc., 43 Ill. HRC Rep.164 (1988).

Therefore, the burden is upon Complainant to prove, by a preponderance of the evidence, that Respondent's articulated reason is false and is merely a pretext for unlawful discrimination. Clyde and Caterpillar, Inc., *Supra*; Ruffin and South Shore YMCA, 33 Ill. HRC Rep. 64 (1987). Pretext may be shown either directly, by offering evidence that a discriminatory reason more likely motivated the employer's actions, or indirectly, by showing that the employer's explanations were not worthy of belief. Burnham City Hospital v. Human Rights Commission, 126 Ill.App.3d 999, 467 N.E.2d 635 (1984). A complainant may discredit an employer's justification for its actions by demonstrating that: (1) the proffered reasons had no basis in fact; (2) the proffered reasons did not actually motivate the decision; or (3) the proffered reasons were insufficient to motivate the decision. Grohs v. Gold Bond Products, 859 F. 2d 1283 (7th Cir. 1988). Pretext may also be shown by preferential treatment to similarly situated employees outside a complainant's protected class. Loyola University v. Human Rights Commission, 149 Ill. App. 3d 8, 500 N.E. 2d 639 (1st Dist. 1986).

In this case, Respondent contends that Complainant was in violation of their attendance policy found in the employee's handbook. Respondent argues that after Complainant left work on July 31, 1998, he failed to call the company for three consecutive days as required and was

thus terminated on August 3, 1998. There are many problems with Respondent's articulated reason for Complainant's termination. The first is the fact that on Friday, July 31, 1998, Respondent received a fax from Complainant's counsel explainaing his absence and requesting time off, which Respondent failed to respond to. Other subsequent letters were also sent to Respondent that put them on notice as to Complainant's absences, and still Respondent refused to respond to them. At the hearing Respondent claimed that they did not receive the letter until after the weekend on Monday, August 3, 1998. Complainant presented a copy of the letter and a transmittal fax report showing that a fax was sent to Respondent on July 31, 1998 from Complainant's counsel's office. Respondent produced a copy of the transmitted letter the transmission date of August 3, 1998. The fact that this copy indicated that it was "page 2" of sent documents leads me to believe that it is suspect at best. I believe that the fax was sent to Complainant on July 31, 1998.

The next problem is that technically, Respondent was not absent for the full day on July 31, 1998. If anything, Complainant should have been charged with a half-day absence. The absences that would have been counted against Complainant would have commenced on August 1, 1998. Thus August 3, 1998 would have been the third day for unexcused absences, which means that Complainant would have been terminated on August 4, 1998. Thus, even if Respondent would have initially received notice by way of fax on August 3, 1998 rather than July 31, 1998, Respondent was made aware of the reason for Complainant's absences prior to the required three days unexcused absences. The language of Respondent's employee handbook also works against Respondent's articulation. The language clearly states, "An employee who is absent for three or more days without calling or notifying the supervisor will be classified as a voluntary termination *unless there are mitigating circumstances* (emphasis added). The letter

sent to Respondent explaining his absences can clearly be considered mitigating circumstances. Therefore, Complainant should not have been voluntarily terminated under the given circumstances.

What I also find very troubling is the fact that there is nothing in the record that was either sent to Complainant or contained in his personnel file indicating that he was actually terminated or that he was terminated for being absent for three consecutive days. In fact, the record shows the opposite was true. The 1998 Attendance Controller record for Respondent shows that beginning in August 3, 1998 through September 25, 1998, Respondent classified Complainant's absences and status as being on "personal time." For whatever reason, this is indicative that Respondent considered Complainant to be an employee of Respondent during that time period. For the reasons stated above, I do not find that Respondent's articulated reason for Complainant's termination to be legally sufficient.

The only remaining issue to be addressed is whether Complainant was discharged by Respondent in retaliation for pursuing his claim of sexual harassment. To establish a *prima facie* case of retaliation, a complainant must establish that (a) they are a member of a class of persons protected by the Act; (b) they were engaged in an activity that is protected by the Act; (c) respondents were aware of the protected activity; (d) complainant suffered an adverse action after engaging in the protected activity; and (e) a causal connection between the protected activity and the adverse action. Muhammed and Walsh/Traylor/Mchugh, 1999 ILHUM LEXIS 166, at 24-25.

It is clear that Complainant is a member of a protected class as outlined in the Oncale case, *supra*. It is also clear that Complainant was engaged in an activity that is protected by the Act when he faxed a letter to Respondent stating a claim for sexual harassment. In the letter, Respondent was notified that the sexual harassment was alleged to have been perpertrated by one

of its supervisors. Complainant's ultimate termination following the letter constitutes an adverse action, as well as a causal connection between the protected activity and the adverse action.

Complainant testified that he did not know that his job was in jeopardy until he had contacted Ms. McVeigh to inform her that he was coming back to work after his doctor cleared him and he wanted to work in her department. On October 1, 1998, he met with Henry Brooks to let him know that he was coming back to work. Mr. Brooks refused to speak with Complainant and told him that his job was dependent upon what the attorneys work out. Respondent argued that this rebut was proper because of the letter they received indicating that they were not to contact Complainant. This is a feable argument at best. The letter in question clearly states that Respondent is not to telephone Complainant directly since his attorney will be dealing with the matter. There is nothing in the letter nor in the law that would have prohibited Mr. Brooks from speaking with Complainant regarding his position. The fact is that Complainant initiated the contact with an opposing party. There is no legal prohibition that would preclude parties from speaking to each other. The only prohibition that may have come into play would be if Complainant attempted to contact Respondent's attorney or vis-a-versa. Under the circumstances, I find that Complainant has proven that his termination was in retaliation for his letter to Respondent, which indicated that he was pursuing a claim of sexual harassment against them.

Damages:

It is clear that the actions of Respondent's supervisor were unwelcomed and of a sexual nature and it had the effect of creating an extremely hostile work environment for Complainant. There is no question that Respondent's actions constituted sexual harassment as defined by the Act. Moreover, there is no question that Respondent's actions caused significant harm to

Complainant. That harm requires an award to make Complainant whole. When a violation of the Act has occurred, the complainant should be placed in the position in which he would have been but for the discrimination. Clark v. Illinois Human Rights Commission, 141 Ill. App. 3d 178, 490 N.E.2d 29 (1st Dist. 1986).

Because Complainant could not continue to work at Brooks Precision, Inc. after his experience with Respondent, Respondent should be held liable for his loss of income. A Complainant who has established that he lost his job in violation of the Human Rights Act is presumptively entitled to an award of back pay that will make him whole. Anderson and National Railroad Passenger Corp., 2 Ill. HRC Rep 124 (1981). At the time of his discharge, Complainant was earning $440.00 per week ($11.00 an hour for a 40 hour week). Complainant was either out of work or in a position that was not comparable to his pay at Respondent for a period of 72 weeks until he obtained gainful employment and was terminated in February of 2000. This falls in line with cases in which there was insufficient justification for leaving a job. (See for example; Brack and K-Mart Apparel Corp., Ill. HRC Rep. (1990CA3300, August 8, 1995), where Complainant was discharged from subsequent job because of altercation with another employee. At the given rate, the total amount of back pay is $31,680.00.

Complainants are under a duty to mitigate their damages. Matthews v. Chicago Export Packing Co., 3 Ill. HRC Rep. 147 (1982). While Complainant is required to make reasonable efforts to seek employment after her discharge, Respondent has the burden of proving that Complainant failed to mitigate her damages**.** ISS International Service System, Inc. v. Illinois Human Rights Commission, 209 Ill.Dec. 414, 651 N.E.2d 592, 598 (Ill.App. 1st Dist. 1995). In this instance, Complainant received $165.00 a week for 26 weeks in unemployment benefits, which totaled $4290.00. Complainant also worked for a year with Suburban Patrol at the rate of

$7.00 an hour in a 16 hour week for one year. The amount of money earned while at Suburban Patrol was $5,376.00. Complainant also earnec $1,600.00 while at Precision Group. The total amount of money earned by Complainant during the period in question was $11,266.00. Subtracting the earned amount from the back pay owed, Complainant is entitled to $20,414.00 in back pay.

Complainant is also entitled to an award for emotional damages. In a recent Commission decision, Davenport and Hennessey Forrestal Illinois, Inc., Ill. HRC Rep. (1987SF0429, November 20, 1998), the Administrative Law Judge reviewed the history of emotional damage awards before the Commission and noted that awards to prevailing complainants for emotional distress have clustered in the range of $ 20,000-30,000. Actual damages as reasonably determined by the Commission, for injury or loss suffered by the Complainant may be awarded as a remedy. 775 ILCS 5/8-104(B). Actual damages include compensation for emotional harm and mental suffering. However, the 1st District Appellate court reminds the Commission to keep awards for emotional distress "within reasonable parameters." Village of Bellwood Bd. of Fire and Police Commissioners v. Human Rights Commission, 184 Ill.App. 3d 339, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1st Dist. 1989). The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for her losses. Smith v. Cook County Sheriff's Office, 19 Ill. HRC Rep. 131, 145 (1985); however, the Commission will award damages beyond pecuniary loss if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for her actual damages. Kincaid v. Village of Bellwood, Bd. of Fire and Police Commissioner, 35 Ill. HRC Rep. 172, 182 (1987).

Complainant requests $50,000.00 in emotional damages. The totality of the conduct of both Respondent was so continuous, outrageous and opprobrious as to justify a substantial award

to compensate Complainant for his emotional damage. Fritz and Ill Dept. of Corrections, Ill. HRC Rep. (1987 SF 0543, May 10, 1994), (citing Kaulin-Schoen and Silhouette American Health Spas, Ill, HRC. Rep. (1986 SF 0177, Feb. 8, 1993). I find the conduct of Respondent in its absolute failure to address the issue of sexual harassment in its workplace and its subsequent action in terminating Complainant to be totally outrageous.

However, I believe that $10,000.00 is a reasonable amount in light of Commission precedent, as well as the disrespect and egregiousness of the Respondents' conduct and the tremendous amount of humiliation, embarrassment, depression and extreme life difficulties it caused the Complainant. I find that Respondent's argument that Complainant is not entitled to an award for emotional distress to be without basis. A complainant's own testimony is a sufficient basis for awarding emotional distress damages. Kauling-Schoen and Silhouette American Health Spas, Ill. HRC Rep. , (1986SF0177, February 9, 1993), supra, slip op'n, p. 21. I find that Complainant's testimony in this matter concerning his emotional damage to be credible, and I also find that the amount allocated in back pay is insufficient to reasonably compensate Complainant for his harm.

Complainant's also claims $1,476.63 for medical expenses incurred for psychiatric treatment. I find that Complainant has presented sufficient proof by way of medical bills for treatment received as a result of this incident. Therefore, Complainant is entitled to $1,476.63 for medical expenses. The amount contributed to the employee's health coverage was paid directly to the health provider by Respondent. Complainant contends that he should receive an award for the lost health and life insurance benefits. He argues that the measure of his damages in that area is the amount Respondent would have paid to purchase such insurance. That claimed element of damages must be rejected. Respondent's payments for health and life insurance

benefits would have been made to an insurance company, not to Complainant. As a result, such payments are not recoverable as an element of damages. Caraway and City of Kankakee Fire and Police Commissioners, Ill. HRC Rep. , (1988CN2969, May 5, 1997). Therefore, Complainant is not entitled to the amount provided by Respondent. Finally, I find that Complainant is entitled to the reasonable attorney fees and costs he incurred in prosecuting this matter.

Recommendation

Based upon the foregoing, the record establishes that Complainant was sexually harassed by Respondent's employee and that Respondent had notice of the sexual harassment and failed to take action, thereby creating a hostile working environment in which Complainant was forced to leave. The record further established that Complainant was terminated in retaliation for pursuing a sexual harassment complaint against Respondent. Accordingly, it is recommended that an order be entered awarding the following relief:

A. That Respondent pay to Complainant the sum of $20,414.00 for lost back pay;

B. That Respondent pay to Complainant the sum of $10,00.00 as compensation for the emotional distress suffered by Complainant as a result of Respondent's actions;

C. That Respondent pay to Complainant the sum of $1,476.63 for medical expenses incurred.

D. That Respondent pay Complainant's attorney fees and costs reasonably incurred in the prosecution of this matter;

E. That Complainant's attorney, Michael Havrilesko, is hereby granted leave to file a

motion for a petition for attorney fees. The amount to be determined after review of said motion and detailed affidavit meeting the standards set out in **Clark and Champaign National Bank,** 4 Ill. HRC Rep. 193 (1982).

F. The motion and affidavit to be filed within 21 days after the service of this order; failure to submit such a motion will be deemed to be a waiver of attorney's fees.

G. If Respondent contests the amount of the requested attorney fees, it must file a written Response to Complainant's motion within 14 days of the service of said motion; failure to do so will be taken as evidence that Respondent does not contest the amount of such fees.

HUMAN RIGHTS COMMISSION

BY:_____

NELSON E. PEREZ
Administrative Law Judge
Administrative Law Section

ENTERED: February 4, 2003